

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 142
97TH GENERAL ASSEMBLY

0843S.05T

2013

AN ACT

To repeal sections 137.100, 386.370, 393.190, 393.320, 393.760, 393.1030, and 393.1075, RSMo, and to enact in lieu thereof seven new sections relating to utilities, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 137.100, 386.370, 393.190, 393.320, 393.760, 393.1030, and
2 393.1075, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as
3 sections 137.100, 386.370, 393.190, 393.320, 393.760, 393.1030, and 393.1075, to read as
4 follows:

137.100. The following subjects are exempt from taxation for state, county or local
2 purposes:

3 (1) Lands and other property belonging to this state;

4 (2) Lands and other property belonging to any city, county or other political subdivision
5 in this state, including market houses, town halls and other public structures, with their furniture
6 and equipments, and on public squares and lots kept open for health, use or ornament;

7 (3) Nonprofit cemeteries;

8 (4) The real estate and tangible personal property which is used exclusively for
9 agricultural or horticultural societies organized in this state, including not-for-profit agribusiness
10 associations;

11 (5) All property, real and personal, actually and regularly used exclusively for religious
12 worship, for schools and colleges, or for purposes purely charitable and not held for private or
13 corporate profit, except that the exemption herein granted does not include real property not

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 actually used or occupied for the purpose of the organization but held or used as investment even
15 though the income or rentals received therefrom is used wholly for religious, educational or
16 charitable purposes;

17 (6) Household goods, furniture, wearing apparel and articles of personal use and
18 adornment, as defined by the state tax commission, owned and used by a person in his home or
19 dwelling place;

20 (7) Motor vehicles leased for a period of at least one year to this state or to any city,
21 county, or political subdivision or to any religious, educational, or charitable organization which
22 has obtained an exemption from the payment of federal income taxes, provided the motor
23 vehicles are used exclusively for religious, educational, or charitable purposes;

24 (8) Real or personal property leased or otherwise transferred by an interstate compact
25 agency created pursuant to sections 70.370 to 70.430 or sections 238.010 to 238.100 to another
26 for which or whom such property is not exempt when immediately after the lease or transfer, the
27 interstate compact agency enters into a leaseback or other agreement that directly or indirectly
28 gives such interstate compact agency a right to use, control, and possess the property; provided,
29 however, that in the event of a conveyance of such property, the interstate compact agency must
30 retain an option to purchase the property at a future date or, within the limitations period for
31 reverts, the property must revert back to the interstate compact agency. Property will no longer
32 be exempt under this subdivision in the event of a conveyance as of the date, if any, when:

33 (a) The right of the interstate compact agency to use, control, and possess the property
34 is terminated;

35 (b) The interstate compact agency no longer has an option to purchase or otherwise
36 acquire the property; and

37 (c) There are no provisions for reverter of the property within the limitation period for
38 reverts;

39 (9) All property, real and personal, belonging to veterans' organizations. As used in this
40 section, "veterans' organization" means any organization of veterans with a congressional charter,
41 that is incorporated in this state, and that is exempt from taxation under section 501(c)(19) of the
42 Internal Revenue Code of 1986, as amended;

43 **(10) Solar energy systems not held for resale.**

386.370. 1. The commission shall, prior to the beginning of each fiscal year beginning
2 with the fiscal year commencing on July 1, 1947, make an estimate of the expenses to be
3 incurred by it during such fiscal year reasonably attributable to the regulation of public utilities
4 as provided in chapters 386, 392 and 393 and shall also separately estimate the amount of such
5 expenses directly attributable to such regulation of each of the following groups of public
6 utilities: Electrical corporations, gas corporations, water corporations, heating companies and
7 telephone corporations, telegraph corporations, sewer corporations, and any other public utility

8 as defined in section 386.020, as well as the amount of such expenses not directly attributable
9 to any such group. **For purposes of this section, water corporations and sewer corporations**
10 **will be combined and considered one group of public utilities.**

11 2. The commission shall allocate to each such group of public utilities the estimated
12 expenses directly attributable to the regulation of such group and an amount equal to such
13 proportion of the estimated expenses not directly attributable to any group as the gross intrastate
14 operating revenues of such group during the preceding calendar year bears to the total gross
15 intrastate operating revenues of all public utilities subject to the jurisdiction of the commission,
16 as aforesaid, during such calendar year. The commission shall then assess the amount so
17 allocated to each group of public utilities, subject to reduction as herein provided, to the public
18 utilities in such group in proportion to their respective gross intrastate operating revenues during
19 the preceding calendar year, except that the total amount so assessed to all such public utilities
20 shall not exceed one-fourth of one percent of the total gross intrastate operating revenues of all
21 utilities subject to the jurisdiction of the commission.

22 3. The commission shall render a statement of such assessment to each such public
23 utility on or before July first and the amount so assessed to each such public utility shall be paid
24 by it to the director of revenue in full on or before July fifteenth next following the rendition of
25 such statement, except that any such public utility may at its election pay such assessment in four
26 equal installments not later than the following dates next following the rendition of said
27 statement, to wit: July fifteenth, October fifteenth, January fifteenth and April fifteenth. The
28 director of revenue shall remit such payments to the state treasurer.

29 4. The state treasurer shall credit such payments to a special fund, which is hereby
30 created, to be known as "The Public Service Commission Fund", which fund, or its successor
31 fund created pursuant to section 33.571, shall be devoted solely to the payment of expenditures
32 actually incurred by the commission and attributable to the regulation of such public utilities
33 subject to the jurisdiction of the commission, as aforesaid. Any amount remaining in such
34 special fund or its successor fund at the end of any fiscal year shall not revert to the general
35 revenue fund, but shall be applicable by appropriation of the general assembly to the payment
36 of such expenditures of the commission in the succeeding fiscal year and shall be applied by the
37 commission to the reduction of the amount to be assessed to such public utilities in such
38 succeeding fiscal year, such reduction to be allocated to each group of public utilities in
39 proportion to the respective gross intrastate operating revenues of the respective groups during
40 the preceding calendar year.

41 5. In order to enable the commission to make the allocations and assessments herein
42 provided for, each public utility subject to the jurisdiction of the commission as aforesaid shall
43 file with the commission, within ten days after August 28, 1996, and thereafter on or before
44 March thirty-first of each year, a statement under oath showing its gross intrastate operating

45 revenues for the preceding calendar year, and if any public utility shall fail to file such statement
46 within the time aforesaid the commission shall estimate such revenue which estimate shall be
47 binding on such public utility for the purpose of this section.

393.190. 1. No gas corporation, electrical corporation, water corporation or sewer
2 corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or
3 encumber the whole or any part of its franchise, works or system, necessary or useful in the
4 performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate
5 such works or system, or franchises, or any part thereof, with any other corporation, person or
6 public utility, without having first secured from the commission an order authorizing it so to do.
7 Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or
8 consolidation made other than in accordance with the order of the commission authorizing same
9 shall be void. The permission and approval of the commission to the exercise of a franchise or
10 permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition
11 or encumbrance of a franchise or permit under this section shall not be construed to revive or
12 validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges
13 contained in the grant of any franchise or permit, or to waive any forfeiture. Any person seeking
14 any order under this subsection authorizing the sale, assignment, lease, transfer, merger,
15 consolidation or other disposition, direct or indirect, of any gas corporation, electrical
16 corporation, water corporation, or sewer corporation, shall, at the time of application for any such
17 order, file with the commission a statement, in such form, manner and detail as the commission
18 shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger,
19 consolidation, or other disposition will have on the tax revenues of the political subdivisions in
20 which any structures, facilities or equipment of the corporations involved in such disposition are
21 located. The commission shall send a copy of all information obtained by it as to what, if any,
22 impact such sale, assignment, lease, transfer, merger, consolidation or other disposition will have
23 on the tax revenues of various political subdivisions to the county clerk of each county in which
24 any portion of a political subdivision which will be affected by such disposition is located.
25 Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or
26 other disposition by any corporation, person or public utility of a class designated in this
27 subsection of property which is not necessary or useful in the performance of its duties to the
28 public, and any sale of its property by such corporation, person or public utility shall be
29 conclusively presumed to have been of property which is not useful or necessary in the
30 performance of its duties to the public, as to any purchaser of such property in good faith for
31 value.

32 2. No such corporation shall directly or indirectly acquire the stock or bonds of any other
33 corporation incorporated for, or engaged in, the same or a similar business, or proposing to
34 operate or operating under a franchise from the same or any other municipality; neither shall any

35 street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in
36 either case, authorized so to do by the commission. Save where stock shall be transferred or held
37 for the purpose of collateral security, no stock corporation of any description, domestic or
38 foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation
39 or street railroad corporation, shall, without the consent of the commission, purchase or acquire,
40 take or hold, more than ten percent of the total capital stock issued by any gas corporation,
41 electrical corporation, water corporation or sewer corporation organized or existing under or by
42 virtue of the laws of this state, except that a corporation now lawfully holding a majority of the
43 capital stock of any gas corporation, electrical corporation, water corporation or sewer
44 corporation may, with the consent of the commission, acquire and hold the remainder of the
45 capital stock of such gas corporation, electrical corporation, water corporation or sewer
46 corporation, or any portion thereof.

47 **3. No person, public utility, or other corporation shall purchase or acquire, take,**
48 **or hold fifty percent or more of the total capital stock issued by any sewer or water**
49 **corporation that regularly provides service to eight thousand or fewer customers without**
50 **notifying the commission within thirty days of said acquisition.**

51 **4. Notwithstanding subsection 3 of this section, any sewer or water corporation that**
52 **regularly provides service to eight thousand or fewer customers that is delinquent in filing**
53 **its public service commission annual report or is six months or more delinquent in paying**
54 **its public service commission assessment or is in violation of any other public service**
55 **commission or Missouri department of natural resources rules or regulations shall not sell**
56 **or transfer fifty percent or more of its total capital stock issued without the consent of the**
57 **commission.**

58 **5.** Nothing herein contained shall be construed to prevent the holding of stock heretofore
59 lawfully acquired, or to prevent upon the surrender or exchange of said stock pursuant to a
60 reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of
61 stock of any new corporation organized to take over, at foreclosure or other sale, the property of
62 any corporation whose stock has been thus surrendered or exchanged. Every contract,
63 assignment, transfer or agreement for transfer of any stock by or through any person or
64 corporation to any corporation in violation of any provision of this chapter shall be void and of
65 no effect, and no such transfer or assignment shall be made upon the books of any such gas
66 corporation, electrical corporation, water corporation or sewer corporation or shall be recognized
67 as effective for any purpose.

393.320. 1. As used in this section, the following terms mean:

2 (1) "Large water public utility", a public utility that regularly provides water service or
3 sewer service to more than eight thousand customer connections and that provides safe and
4 adequate service but shall not include a sewer district established under Section 30(a), Article

5 VI of the Missouri Constitution, sewer districts established under the provisions of chapter 204,
6 249, or 250, public water supply districts established under the provisions of chapter 247, or
7 municipalities that own water or sewer systems;

8 (2) "Small water utility", a public utility that regularly provides water service or sewer
9 service to eight thousand or fewer customer connections; a water district established under the
10 provisions of chapter 247 that regularly provides water or sewer service to eight thousand or
11 fewer customer connections; a sewer district established under the provisions of chapter 204,
12 249, or 250 that regularly provides sewer service to eight thousand or fewer customer
13 connections; or a water system or sewer system owned by a municipality that regularly provides
14 water service or sewer service to eight thousand or fewer customer connections; and all other
15 entities that regularly provide water service or sewer service to eight thousand or fewer customer
16 connections.

17 2. The procedures contained in this section may be chosen by a large water public utility,
18 and if so chosen shall be used by the public service commission to establish the ratemaking rate
19 base of a small water utility during an acquisition.

20 3. (1) An appraisal shall be performed by three appraisers. One appraiser shall be
21 appointed by the small water utility, one appraiser shall be appointed by the large water public
22 utility, and the third appraiser shall be appointed by the two appraisers so appointed. Each of the
23 appraisers shall be a disinterested person who is a certified general appraiser under chapter 339.

24 (2) The appraisers shall:

25 (a) Jointly prepare an appraisal of the fair market value of the water system and/or sewer
26 system. The determination of fair market value shall be in accordance with Missouri law and
27 with the Uniform Standards of Professional Appraisal Practice; and

28 (b) Return their appraisal, in writing, to the small water utility and large water public
29 utility in a reasonable and timely manner.

30 (3) If all three appraisers cannot agree as to the appraised value, the appraisal, when
31 signed by two of the appraisers, constitutes a good and valid appraisal.

32 4. Nothing in this section shall prohibit a party from declining to proceed with an
33 acquisition or be deemed as establishing the final purchase price of an acquisition.

34 5. (1) The lesser of the purchase price or the appraised value, together with the
35 reasonable and prudent transaction, closing, and transition costs incurred by the large water
36 public utility, shall constitute the ratemaking rate base for the small water utility as acquired by
37 the acquiring large water public utility; provided, however, that if the small water utility is a
38 public utility subject to chapter 386 and the small water utility completed a rate case prior to the
39 acquisition, the public service commission may select as the ratemaking rate base for the small
40 water utility as acquired by the acquiring large water public utility a ratemaking rate base in
41 between:

42 (a) The lesser of the purchase price or the appraised value, together with the reasonable
43 and prudent transaction, closing, and transition costs incurred by the large water public utility
44 unless such transaction, closing, and transition costs are elsewhere recoverable in rates; and

45 (b) The ratemaking rate base of the small water utility as ordered by the public service
46 commission in the small water utility's last previous rate case as adjusted by improvements and
47 depreciation reserve since the previous rate case together with the transaction, closing, and
48 transition costs incurred by the large water public utility unless such transaction, closing, and
49 transition costs are elsewhere recoverable in rates. If the small water utility and large water
50 public utility proceed with the sale, any past-due fees due to the state from the small water utility
51 or its customers under chapter 640 or 644 shall be resolved prior to the transfer of ownership or
52 the liability for such past-due fees becomes the responsibility of the large water public utility.
53 Such fees shall not be included in the large water public utility's rate base.

54 (2) The public service commission shall issue its decision establishing the ratemaking
55 rate base of the small water utility in its order approving the acquisition.

56 **6. Upon the date of the acquisition of a small water utility by a large water public**
57 **utility, whether or not the procedures for establishing ratemaking rate base provided by**
58 **this section have been utilized, the small water utility shall, for ratemaking purposes,**
59 **become part of an existing service area, as defined by the public service commission, of the**
60 **acquiring large water public utility that is either contiguous to the small water utility, the**
61 **closest geographically to the small water utility, or best suited due to operational or other**
62 **factors. This consolidation shall be approved by the public service commission in its order**
63 **approving the acquisition.**

64 **7.** Any new permit issued pursuant to chapters 640 and 644, when a small water utility
65 is acquired by a large water public utility, shall include a plan to resolve all outstanding permit
66 compliance issues. After the transfer of ownership, the acquiring large public water utility shall
67 continue providing service to all customers that were served by the small water utility at the time
68 of sale.

69 **[7.] 8.** This section is intended for the specific and unique purpose of determining the
70 ratemaking rate base of small water utilities and shall be exclusively applied to large water public
71 utilities in the acquisition of a small water utility. This section is not intended to apply beyond
72 its specific purpose and shall not be construed in any manner to apply to electric corporations,
73 natural gas corporations, or any other utility regulated by the public service commission.

393.760. 1. Each participating municipality shall, in accordance with the provisions of
2 chapter 115, order an election to be held whereby the qualified electors in such participating
3 municipality shall approve or disapprove the issuance of its bonds to finance its individual
4 interest in the project. The participating municipality may not order such an election until it has
5 received a report from an independent consulting engineer as defined in section 327.181 for the

6 purpose of determining the economic and engineering feasibility of any proposed project the
7 costs of which are to be financed through the issuance of bonds. The report of the consulting
8 engineer shall be provided to and approved by the legislative body and executive of each such
9 participating municipality and such report shall be open to public inspection and shall be the
10 subject of a public hearing in each participating municipality. Notice of the time and place of
11 each such hearing shall be published in a daily newspaper of general circulation within each such
12 participating municipality. Interested parties may appear and fully participate in such hearings.

13 2. Each participating municipality shall notify the election authority or authorities
14 responsible for conducting elections within such participating municipality in accordance with
15 chapter 115.

16 3. The question shall be submitted in substantially the following form:

17 OFFICIAL BALLOT

18 Shall (name of participating municipality) issue its (type) revenue bonds in an amount
19 not to exceed \$..... for the purpose of paying its share of the cost of participating in
20 (describe project)?

21 ☐ YES ☐ NO

22 If you are in favor of the resolution, place an "X" in the box opposite "Yes".

23 If you are opposed to the question, place an "X" in the box opposite "No".

24 4. If the issuance of the bonds is approved by at least a majority of the qualified electors
25 voting thereon in the participating municipality, the participating municipality shall declare the
26 result of the election and cause the bonds to be issued.

27 5. Each participating municipality shall bear all expenses associated with the elections
28 in such participating municipality.

29 6. [In lieu of the public voting procedure set forth in subsections 1 to 5 of this section,]
30 In the case of purchasing or leasing, constructing, installing, and operating reservoirs, pipelines,
31 wells, check dams, pumping stations, water purification plants, and other facilities for the
32 production, wholesale distribution, and utilization of water, the commission may provide for a
33 vote by the governing body of each contracting municipality. Such vote shall require the
34 approval of three-quarters of all governing bodies of the contracting municipalities. The
35 commission may not order such a vote until it has engaged and received a report from an
36 independent consulting engineer as defined in section 327.181 for the purpose of determining
37 the economic and engineering feasibility of any proposed project the costs of which are to be
38 financed through the issuance of bonds. The report of the consulting engineer shall be provided
39 to and approved by the legislative body and executive of each contracting municipality
40 participating in the project and such report shall be open to public inspection and shall be the
41 subject of a public hearing in each municipality participating in the project. Notice of the time
42 and place of each such hearing shall be published in a daily newspaper of general circulation

43 within each municipality. Interested parties may appear and fully participate in such hearings.
44 Each contracting municipality shall vote by ordinance or resolution and such ordinance or
45 resolution shall approve the issuance of revenue bonds by the joint municipal water commission
46 in an amount not to exceed a specified amount.

393.1030. 1. The commission shall, in consultation with the department, prescribe by
2 rule a portfolio requirement for all electric utilities to generate or purchase electricity generated
3 from renewable energy resources. Such portfolio requirement shall provide that electricity from
4 renewable energy resources shall constitute the following portions of each electric utility's sales:

- 5 (1) No less than two percent for calendar years 2011 through 2013;
- 6 (2) No less than five percent for calendar years 2014 through 2017;
- 7 (3) No less than ten percent for calendar years 2018 through 2020; and
- 8 (4) No less than fifteen percent in each calendar year beginning in 2021.

9
10 At least two percent of each portfolio requirement shall be derived from solar energy. The
11 portfolio requirements shall apply to all power sold to Missouri consumers whether such power
12 is self-generated or purchased from another source in or outside of this state. A utility may
13 comply with the standard in whole or in part by purchasing RECs. Each kilowatt-hour of eligible
14 energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance.

15 2. The commission, in consultation with the department and within one year of
16 November 4, 2008, shall select a program for tracking and verifying the trading of renewable
17 energy credits. An unused credit may exist for up to three years from the date of its creation.
18 A credit may be used only once to comply with sections 393.1020 to 393.1030 and may not also
19 be used to satisfy any similar nonfederal requirement. An electric utility may not use a credit
20 derived from a green pricing program. Certificates from net-metered sources shall initially be
21 owned by the customer-generator. The commission, except where the department is specified,
22 shall make whatever rules are necessary to enforce the renewable energy standard. Such rules
23 shall include:

- 24 (1) A maximum average retail rate increase of one percent determined by estimating and
25 comparing the electric utility's cost of compliance with least-cost renewable generation and the
26 cost of continuing to generate or purchase electricity from entirely nonrenewable sources, taking
27 into proper account future environmental regulatory risk including the risk of greenhouse gas
28 regulation. **Notwithstanding the foregoing, until June 30, 2020, if the maximum average**
29 **retail rate increase would be less than or equal to one percent if an electric utility's**
30 **investment in solar-related projects initiated, owned or operated by the electric utility is**
31 **ignored for purposes of calculating the increase, then additional solar rebates shall be paid**
32 **and included in rates in an amount up to the amount that would produce a retail rate**
33 **increase equal to the difference between a one percent retail rate increase and the retail**

34 **rate increase calculated when ignoring an electric utility's investment in solar-related**
35 **projects initiated, owned, or operated by the electric utility. Notwithstanding any**
36 **provision to the contrary in this section, even if the payment of additional solar rebates will**
37 **produce a maximum average retail rate increase of greater than one percent when an**
38 **electric utility's investment in solar-related projects initiated, owned or operated by the**
39 **electric utility are included in the calculation, the additional solar rebate costs shall be**
40 **included in the prudently incurred costs to be recovered as contemplated by subdivision**
41 **(4) of this subsection;**

42 (2) Penalties of at least twice the average market value of renewable energy credits for
43 the compliance period for failure to meet the targets of subsection 1 **of this section**. An electric
44 utility will be excused if it proves to the commission that failure was due to events beyond its
45 reasonable control that could not have been reasonably mitigated, or that the maximum average
46 retail rate increase has been reached. Penalties shall not be recovered from customers. Amounts
47 forfeited under this section shall be remitted to the department to purchase renewable energy
48 credits needed for compliance. Any excess forfeited revenues shall be used by the department's
49 energy center solely for renewable energy and energy efficiency projects;

50 (3) Provisions for an annual report to be filed by each electric utility in a format
51 sufficient to document its progress in meeting the targets;

52 (4) Provision for recovery outside the context of a regular rate case of prudently incurred
53 costs and the pass-through of benefits to customers of any savings achieved by an electrical
54 corporation in meeting the requirements of this section.

55 3. **As provided for in this section, except for those electrical corporations that**
56 **qualify for an exemption under section 393.1050, each electric utility shall make available to**
57 **its retail customers a [standard] solar rebate [offer of at least two dollars per installed watt] for**
58 **new or expanded solar electric systems sited on customers' premises, up to a maximum of**
59 **twenty-five kilowatts per system, measured in direct current that [become operational after**
60 **2009] were confirmed by the electric utility to have become operational in compliance with**
61 **the provisions of section 386.890. The solar rebates shall be two dollars per watt for**
62 **systems becoming operational on or before June 30, 2014; one dollar and fifty cents per**
63 **watt for systems becoming operational between July 1, 2014, and June 30, 2015; one dollar**
64 **per watt for systems becoming operational between July 1, 2015, and June 30, 2016; fifty**
65 **cents per watt for systems becoming operational between July 1, 2016, and June 30, 2017;**
66 **fifty cents per watt for systems becoming operational between July 1, 2017, and June 30,**
67 **2019; twenty-five cents per watt for systems becoming operational between July 1, 2019,**
68 **and June 30, 2020; and zero cents per watt for systems becoming operational after June**
69 **30, 2020. An electric utility may, through its tariffs, require applications for rebates to be**
70 **submitted up to one hundred eighty-two days prior to the June 30 operational date.**

71 **Nothing in this section shall prevent an electrical corporation from offering rebates after**
72 **July 1, 2020, through an approved tariff. If the electric utility determines the maximum**
73 **average retail rate increase provided for in subdivision (1) of subsection 2 of this section**
74 **will be reached in any calendar year, the electric utility shall be entitled to cease paying**
75 **rebates to the extent necessary to avoid exceeding the maximum average retail rate increase**
76 **if the electrical corporation files with the commission to suspend its rebate tariff for the**
77 **remainder of that calendar year at least sixty days prior to the change taking effect. The**
78 **filing with the commission to suspend the electrical corporation's rebate tariff shall include**
79 **the calculation reflecting that the maximum average retail rate increase will be reached**
80 **and supporting documentation reflecting that the maximum average retail rate increase**
81 **will be reached. The commission shall rule on the suspension filing within sixty days of the**
82 **date it is filed. If the commission determines that the maximum average retail rate increase**
83 **will be reached the commission shall approve the tariff suspension. The electric utility**
84 **shall continue to process and pay applicable solar rebates until a final commission ruling;**
85 **however, if the continued payment causes the electric utility to pay rebates that cause it to**
86 **exceed the maximum average retail rate increase, the expenditures shall be considered**
87 **prudently incurred costs as contemplated by subdivision (4) of subsection 2 of this section**
88 **and shall be recoverable as such by the electric utility. As a condition of receiving a rebate,**
89 **customers shall transfer to the electric utility all right, title, and interest in and to the**
90 **renewable energy credits associated with the new or expanded solar electric system that**
91 **qualified the customer for the solar rebate for a period of ten years from the date the**
92 **electric utility confirmed that the solar electric system was installed and operational.**

93 4. The department shall, in consultation with the commission, establish by rule a
94 certification process for electricity generated from renewable resources and used to fulfill the
95 requirements of subsection 1 of this section. Certification criteria for renewable energy
96 generation shall be determined by factors that include fuel type, technology, and the
97 environmental impacts of the generating facility. Renewable energy facilities shall not cause
98 undue adverse air, water, or land use impacts, including impacts associated with the gathering
99 of generation feedstocks. If any amount of fossil fuel is used with renewable energy resources,
100 only the portion of electrical output attributable to renewable energy resources shall be used to
101 fulfill the portfolio requirements.

102 5. In carrying out the provisions of this section, the commission and the department shall
103 include methane generated from the anaerobic digestion of farm animal waste and thermal
104 depolymerization or pyrolysis for converting waste material to energy as renewable energy
105 resources for purposes of this section.

106 6. **The commission shall have the authority to promulgate rules for the**
107 **implementation of this section, but only to the extent such rules are consistent with, and**

108 **do not delay the implementation of, the provisions of this section. Any rule or portion of**
109 **a rule, as that term is defined in section 536.010 that is created under the authority**
110 **delegated in this section shall become effective only if it complies with and is subject to all**
111 **of the provisions of chapter 536, and, if applicable, section 536.028. This section and**
112 **chapter 536 are nonseverable and if any of the powers vested with the general assembly**
113 **pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul**
114 **a rule are subsequently held unconstitutional, then the grant of rulemaking authority and**
115 **any rule proposed or adopted after August 28, 2013, shall be invalid and void.**

393.1075. 1. This section shall be known as the "Missouri Energy Efficiency Investment
2 Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Commission", the Missouri public service commission;

5 (2) "Demand response", measures that decrease peak demand or shift demand to off-peak
6 periods;

7 (3) "Demand-side program", any program conducted by the utility to modify the net
8 consumption of electricity on the retail customer's side of the electric meter, including but not
9 limited to energy efficiency measures, load management, demand response, and interruptible or
10 curtailable load;

11 (4) "Energy efficiency", measures that reduce the amount of electricity required to
12 achieve a given end use;

13 (5) "Interruptible or curtailable rate", a rate under which a customer receives a reduced
14 charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under
15 certain specified conditions;

16 (6) "Total resource cost test", a test that compares the sum of avoided utility costs and
17 avoided probable environmental compliance costs to the sum of all incremental costs of end-use
18 measures that are implemented due to the program, as defined by the commission in rules.

19 3. It shall be the policy of the state to value demand-side investments equal to traditional
20 investments in supply and delivery infrastructure and allow recovery of all reasonable and
21 prudent costs of delivering cost-effective demand-side programs. In support of this policy, the
22 commission shall:

23 (1) Provide timely cost recovery for utilities;

24 (2) Ensure that utility financial incentives are aligned with helping customers use energy
25 more efficiently and in a manner that sustains or enhances utility customers' incentives to use
26 energy more efficiently; and

27 (3) Provide timely earnings opportunities associated with cost-effective measurable and
28 verifiable efficiency savings.

29 4. The commission shall permit electric corporations to implement
30 commission-approved demand-side programs proposed pursuant to this section with a goal of
31 achieving all cost-effective demand-side savings. Recovery for such programs shall not be
32 permitted unless the programs are approved by the commission, result in energy or demand
33 savings and are beneficial to all customers in the customer class in which the programs are
34 proposed, regardless of whether the programs are utilized by all customers. The commission
35 shall consider the total resource cost test a preferred cost-effectiveness test. Programs targeted
36 to low-income customers or general education campaigns do not need to meet a
37 cost-effectiveness test, so long as the commission determines that the program or campaign is
38 in the public interest. Nothing herein shall preclude the approval of demand-side programs that
39 do not meet the test if the costs of the program above the level determined to be cost-effective
40 are funded by the customers participating in the program or through tax or other governmental
41 credits or incentives specifically designed for that purpose.

42 5. To comply with this section the commission may develop cost recovery mechanisms
43 to further encourage investments in demand-side programs including, in combination and
44 without limitation: capitalization of investments in and expenditures for demand-side programs,
45 rate design modifications, accelerated depreciation on demand-side investments, and allowing
46 the utility to retain a portion of the net benefits of a demand-side program for its shareholders.
47 In setting rates the commission shall fairly apportion the costs and benefits of demand-side
48 programs to each customer class except as provided for in subsection 6 of this section. Prior to
49 approving a rate design modification associated with demand-side cost recovery, the commission
50 shall conclude a docket studying the effects thereof and promulgate an appropriate rule.

51 6. The commission may reduce or exempt allocation of demand-side expenditures to
52 low-income classes, as defined in an appropriate rate proceeding, as a subclass of residential
53 service.

54 7. Provided that the customer has notified the electric corporation that the customer
55 elects not to participate in demand-side measures offered by an electrical corporation, none of
56 the costs of demand-side measures of an electric corporation offered under this section or by any
57 other authority, and no other charges implemented in accordance with this section, shall be
58 assigned to any account of any customer, including its affiliates and subsidiaries, meeting one
59 or more of the following criteria:

60 (1) The customer has one or more accounts within the service territory of the electrical
61 corporation that has a demand of five thousand kilowatts or more;

62 (2) The customer operates an interstate pipeline pumping station, regardless of size; or

63 (3) The customer has accounts within the service territory of the electrical corporation
64 that have, in aggregate, a demand of two thousand five hundred kilowatts or more, and the

65 customer has a comprehensive demand-side or energy efficiency program and can demonstrate
66 an achievement of savings at least equal to those expected from utility-provided programs.

67 8. Customers that have notified the electrical corporation that they do not wish to
68 participate in demand-side programs under this section shall not subsequently be eligible to
69 participate in demand-side programs except under guidelines established by the commission in
70 rulemaking.

71 9. Customers who participate in demand-side programs initiated after August 1, 2009,
72 shall be required to participate in program funding for a period of time to be established by the
73 commission in rulemaking.

74 10. Customers electing not to participate in an electric corporation's demand-side
75 programs under this section shall still be allowed to participate in interruptible or curtailable rate
76 schedules or tariffs offered by the electric corporation.

77 11. The commission shall provide oversight and may adopt rules and procedures and
78 approve corporation-specific settlements and tariff provisions, independent evaluation of
79 demand-side programs, as necessary, to ensure that electric corporations can achieve the goals
80 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is
81 created under the authority delegated in this section shall become effective only if it complies
82 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
83 This section and chapter 536 are nonseverable and if any of the powers vested with the general
84 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
85 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
86 any rule proposed or adopted after August 28, 2009, shall be invalid and void.

87 12. Each electric corporation shall submit an annual report to the commission describing
88 the demand-side programs implemented by the utility in the previous year. The report shall
89 document program expenditures, including incentive payments, peak demand and energy savings
90 impacts and the techniques used to estimate those impacts, avoided costs and the techniques used
91 to estimate those costs, the estimated cost-effectiveness of the demand-side programs, and the
92 net economic benefits of the demand-side programs.

93 13. Charges attributable to demand-side programs under this section shall be clearly
94 shown as a separate line item on bills to the electrical corporation's customers.

95 14. (1) Any customer of an electrical corporation who has received a state tax credit
96 under sections 135.350 to 135.362 or under sections 253.545 to 253.561 shall not be eligible for
97 participation in any demand-side program offered by an electrical corporation under this section
98 if such program offers a monetary incentive to the customer, **except as provided in subdivision**
99 **(4) of this subsection.**

100 (2) As a condition of participation in any demand-side program offered by an electrical
101 corporation under this section when such program offers a monetary incentive to the customer,

102 the commission shall develop rules that require documentation to be provided by the customer
103 to the electrical corporation to show that the customer has not received a tax credit listed in
104 subdivision (1) of this subsection.

105 (3) The penalty for a customer who provides false documentation under subdivision (2)
106 of this subsection shall be a class A misdemeanor.

107 **(4) The provisions of this subsection shall not apply to any low-income customer**
108 **who would otherwise be eligible to participate in a demand-side program that is offered**
109 **by an electrical corporation to low-income customers.**

110 15. The commission shall develop rules that provide for disclosure of participants in all
111 demand-side programs offered by electrical corporations under this section when such programs
112 provide monetary incentives to the customer. The disclosure required by this subsection may
113 include, but not be limited to, the following: the name of the participant, or the names of the
114 principles if for a company, the property address, and the amount of the monetary incentive
115 received.

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